Naturally the active agents are also personally liable to fine or imprisonment, and they may be indicted jointly with the corporation.[18]

CONSENT AS THE BASIS OF PERSONAL JURISDICTION. — No recovery is allowed on a foreign judgment rendered by a court having no jurisdiction.[1] Usually it is enough for the defendant to prove affirmatively that in the former action there was no personal, intra-territorial service upon him,[2] though this plea may be overthrown by showing that he appeared in the former action as plaintiff,[3] or voluntarily and without protest as defendant.[4] If the parties submit to the jurisdiction of the court they are normally concluded by its judgment.

Jurisdiction may also be conferred on the court by agreement between the parties. Thus an express contract so to do is sufficient.[5] A power to confess judgment upon a note, conferred by the note itself, is valid,[6] though it must be strictly pursued.[7] An agreement to confer jurisdiction may also be implied. Thus where one bought stock in a French corporation, and in compliance with French law designated an agent to receive service, it is easy to find conscious assent that such service should be sufficient.[8] The decisions go further, however, and hold valid as against a non-resident stockholder in a joint-stock company a judgment recovered against the chairman of the company by virtue of a statute which designated such chairman as the proper person to sue and be sued as the representative of the stockholders, though the stockholder had no actual notice, either of the action or of the statute.[9] Similarly, where a statute provides that if a foreign corporation does business within the state through agents, service upon such agents is sufficient service upon the corporation, the doing of business in the state is an assent to the conditions of the statute, even though the corporation had no actual notice thereof.[10] Yet in both cases there is a genuine contract flowing from consent, and not an obligation in law imposed irrespective of consent. If the defendant had had actual notice of these conditions, and had then acted as he did, this would either amount to conscious assent thereto, or estop him to deny such assent. Instead of actual, he had constructive notice, and since the law deems these equivalent, his actions give rise to a genuine contract, precisely as if there had been conscious assent. If, therefore, an agreement is relied on to give jurisdiction, the elements of a genuine contract must be found either actually or constructively.

---

[18] People *v.* Clark, 8 N. Y. Crim. Rep. 179.

[1] Sirdar Gurdyal Singh *v.* Rajah of Faridkote, [1894] A. C. 670; Bischoff *v.* Wethered, 9 Wall. (U. S.) 812.

[2] Sirdar Gurdyal Singh *v.* Rajah of Faridkote, *supra;* Pennoyer *v.* Neff, 95 U. S. 714.

[3] Ricardo *v.* Garcias, 12 Cl. & F. 367. See Fitzsimmons *v.* Johnson, 90 Tenn. 416.

[4] Voinet *v.* Barrett, 55 L. J. Q. B. 39; Hilton *v.* Guyot, 159 U. S. 113.

[5] Feyericks *v.* Hubbard, 18 T. L. R 381. See, also, Dicey, Conf. of Laws, 369.

[6] Teel *v.* Yost, 128 N. Y. 387; Snyder *v.* Critchfield, 44 Neb. 66.

[7] Grover, etc., Machine Co. *v.* Radcliffe, 137 U. S. 287.

[8] Vallée *v.* Dumergue, 4 Exch. 290.

[9] Bank of Australasia *v.* Nias, 16 Q. B. 717; Kersall *v.* Marshall, 1 C. B. (N. S.) 240; Bank of Australasia *v.* Harding, 9 C. B. 661. See Copin *v.* Adamson, L. R. 9 Exch. 345.

[10] St. Clair *v.* Cox, 106 U. S. 350.

A recent case, however, lays down that one who entered a foreign partnership "must be taken to have consented" that the foreign court should settle partnership disputes, and upon that ground holds valid a deficiency judgment recovered abroad in winding up the partnership by the foreign partners against the non-resident partner. *Emanuel* v. *Symon*, 23 T. L. R. 94 (Eng., K. B. D., Nov. 26, 1906). This seems to go too far. A partnership agreement is only a contract; and in general one who contracts in a foreign country does not consent either actually or constructively that disputes in regard to the contract shall be settled in the courts of that country.[11] Nor has partnership been held to be peculiar in this respect. A foreign partner does not, by entering the partnership, consent to be adjudged a bankrupt,[12] or to be sued as partner by third parties,[13] without personal service. It seems doubtful, therefore, to find such consent conferred, as between the partners themselves, by the mere formation of the partnership.

RECENT CASES.

ANIMALS — TRESPASS ON REALTY — JOINT LIABILITY. — The defendants were in common occupation of a cattle range, and each of them owned several cattle in a herd. This herd entered the plaintiff's close and injured her crops. *Held*, that the defendants are jointly responsible for the damage done. *Wilson* v. *White*, 109 N. W. Rep. 367 (Neb.).

Ordinarily, when a trespass is committed by several animals belonging to different owners, the owners can be held severally but not jointly for the damage done. *Westgate* v. *Carr*, 43 Ill. 450. When the harm done by the animals of each owner cannot be ascertained, the damages are apportioned equally if the animals presumably have equal powers for doing harm. *Partenheimer* v. *Van Order*, 20 Barb. (N. Y.) 479. If not, they are divided according to the number of animals owned by each defendant or according to their size. *Powers* v. *Kindt*, 13 Kan. 74; *Wilbur* v. *Hubbard*, 35 Barb. (N. Y.) 303. However, when several persons have animals in their joint control and keeping they are jointly responsible. *Smith* v. *Jacques*, 6 Conn. 530. And it is immaterial that the animals are also owned by them severally. *Jack* v. *Hudnall*, 25 Oh. St. 255. When the only connection between the owners is that they occupy in common a tract of land or herd their animals together, it would seem that there ought to be no joint liability. *Cogswell* v. *Murphy*, 46 Ia. 44. The impracticability of putting a plaintiff to a number of actions to gain redress may, however, justify an opposite ruling. This latter view finds support in that in many states statutes exist making owners of dogs jointly injuring sheep jointly responsible. See *Nelson* v. *Nugent*, 106 Wis. 477.

BANKRUPTCY — PROPERTY PASSING TO TRUSTEE — TRUSTEE EQUIVALENT TO JUDGMENT CREDITOR OR PURCHASER WITHOUT NOTICE. — A New Jersey statute provided that an unrecorded conditional sale, where the chattels were delivered to the vendee, should be void as against judgment creditors or subsequent purchasers without notice. A vendee of chattels thus sold and delivered became bankrupt. *Held*, that the trustee in bankruptcy is vested with a title unimpeachable by the vendor. *In re Franklin Lumber Co.*, 147 Fed. Rep. 852 (Dist. Ct., Dist. N. J.).

For comment on a similar case, see 20 HARV. L. REV. 65.

---

[11] Sirdar Gurdyal Singh *v.* Rajah of Faridkote, *supra*. But see Meeus *v.* Thelusson, 8 Exch. 638.

[12] *Ex parte* Blain, 12 Ch. D. 522; *In re* A. B. & Co., [1900] 1 Q. B. 541.

[13] Hall *v.* Lanning, 91 U. S. 160.